

-BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.1001 [ARM 2.43.3501	)	AMENDMENT
effective December 1, 2008, pursuant	)	
to MAR Notice No. 2-43-403]	)	NO PUBLIC HEARING
pertaining to the adoption by	)	CONTEMPLATED
reference of the State of Montana	)	
Public Employee Defined	)	
Contribution Plan Document,	)	
January 1, 2008, edition	)	

TO: All Concerned Persons

1. On January 30, 2009, the Montana Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employees' Retirement Board no later than 5:00 p.m. on December 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-9174; fax (406) 444-5428; TDD (406) 444-1421; or e-mail msymons@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.1001 [2.43.3501] ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board ~~hereby~~ adopts and incorporates by reference the following:

(a) State of Montana Public Employee Defined Contribution Plan Document (January 1, 2008, edition) that was approved by the board on November 14, 2008; and

(b) State of Montana Public Employee Defined Contribution Plan Trust Agreement (July 1, 2002<sub>1</sub> edition), that was approved by the board on April 26, 2001<sub>1</sub>, and September 28, 2001, and approved by the Internal Revenue Service on September 24, 2001.

(2) Copies of the Defined Contribution Plan Document, Trust Agreement<sub>1</sub>, and related materials may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@mt.gov, and are available on MPERA's web site at www.mpera.mt.gov.

AUTH: 19-3-2104, MCA

IMP: 19-3-2102, MCA

STATEMENT OF REASONABLE NECESSITY: The Pension Protection Act of 2006 and other recent congressional enactments, including the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), require changes to the Montana Public Employees' Retirement System's (PERS) Defined Contribution Plan Document (Plan Document) to ensure the Plan Document remains qualified for tax purposes under the Internal Revenue Code. The Montana Public Employees' Retirement Board is also taking this opportunity to eliminate possible confusion by removing sections of the Plan Document that pertain solely to the initial window (July 1, 2002 through June 30, 2003) during which existing PERS members had one year to elect whether to stay in the PERS Defined Benefit Retirement Plan or the PERS Defined Contribution Retirement Plan. That window has expired.

The revised Plan Document was submitted to the Internal Revenue Service (IRS) for approval on October 31, 2008. This rule will be amended to reflect the date the Plan Document is approved. If any portion of the document is not accepted by the IRS, a revised Plan Document will be adopted by the board and referenced in an amended version of this rule. The Trust Agreement remains the same as initially adopted. The board is proposing to reference the two documents separately as the Plan Document will be revised more frequently than the Trust Agreement, and will therefore be updated and ultimately approved by the IRS on a different schedule.

MPERA's web site address has changed.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; fax (406) 444-5428; or e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov), and must be received no later than 5:00 p.m., December 31, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Roxanne M. Minnehan at the above address no later than 5:00 p.m., December 31, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 214 persons based on 2147 participants in the Defined Contribution Retirement Plan as of September 2008.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph #4 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Melanie A. Symons

Melanie A. Symons  
Legal Counsel and  
Rule Reviewer

/s/ John Paull

John Paull  
President  
Montana Public Employees' Retirement  
Board

/s/ Michael P. Manion

Michael P. Manion  
Chief Legal Counsel and  
Rule Reviewer

Certified to the Secretary of State November 17, 2008.